Re M. A. ABDUL MAJEED.

[O. C. J. (Brown, Ag. C.J.) November 13, 1953]

[Singapore — Bankruptcy No. 36 of 1952]

Bankruptcy — Adjournment of hearing — Bankruptcy Rule 126 — Effect of non-compliance with Rule 126.

This was a bankrupt's motion to annul the Receiving and Adjudication Orders made against him on the ground that in adjourning the petition sine die Rule 126 was infringed. The petition was adjourned sine die in compliance with a joint request made by the bankrupt and the petitioning creditor, or a request by one of them with the concurrence of the other.

Rule 126 of the Bankruptcy Rules reads as follows:—

"After the expiration of one month from the day appointed for the first hearing of a petition (provided such petition shall have been duly served) no further adjournment of the hearing merely by consent of the parties shall be allowed except for the reasons set forth in Rule 119 of these Rules or for such other sufficient reason to be stated in the order for adjournment as the Court thinks fit; but in every such case unless an order for adjournment is made the Court shall either make a receiving order or dismiss such appointment."

When the petition was restored to the list the bankrupt himself did not receive notice of it.

Held: the bankrupt himself contributed to the infringement of Rule 126.

BANKRUPTCY.

P. F. X. Leonard for the bankrupt.

A. P. Godwin for the petitioning creditor.

Cur. Adv. Vult.

Brown, Ag. C.J. : — This was a bankrupt's motion to annul the Receiving and Adjudication Orders which were made against him on 2nd October 1953. The only point of substance, in my opinion, was that in adjourning the petition *sine die* on the 25th July 1952 Rule 126 was infringed, and that when the petition was restored to the list he himself received no notice of it. This case seems to emphasize the importance of Rule 126, and I thought it right to take time to consider the effect of non-compliance with that Rule.

In considering the exercise of my discretion to annul the Receiving and Adjudication Orders the following factors seem to me important:—

(1) The bankrupt himself contributed to the infringement of Rule 126. It was in compliance with a joint request made by him and the petitioning creditor, or a request by one of them with the concurrence of the other, that the petition was adjourned *sine die*.

(2) If Rule 126 had been drawn to the Court's attention it is certain that the Court would not have dismissed the petition. It would either have made a receiving order then, or if it had ordered an adjournment it would have stated in the order the reasons for it.

(3) When the petition was reinstated the petitioning creditor's solicitors notified the bankrupt's solicitors. The latter replied that they had no instructions. It seems to me that the bankrupt was to blame for the receiving order being made in his absence because with an adjourned petition pending he left no instructions with his solicitors and took no other step to see that he was informed of its reinstatement.

(4) His only disclosed assets are the three actions for $3,294.31 each. These assets are problematical; and his debt to the petitioning creditor alone is over $13,000.

(5) If he had attended on the 2nd of October 1953 it seems to me that there is nothing in his affidavit which would have caused the Court to dismiss the petition, and the Court would have adjudged him bankrupt. If that is so, there is no reason to annul the receiving and adjudication orders now.

There will be no order.

No order.

Solicitors for the bankrupt: *Sisson & Delay.*

Solicitors for the petitioning creditor: *Donaldson & Burkinshaw.*

YIM YIP KAE & ANOR. v. KWONG HOCK CHEONG SAWMILL & CO., LTD.

[O. C. J. (Aitken, Ag. J.A.) August 8, 1941]

[Singapore — Suit No. 36 of 1941]

Land laws — Ownership of land encroached by tidal water — Acquisition of foreshore by prescription — Easement — Presumption of lost grant in spite of Registration of Deeds Ordinance — Rights of riparian owners to tidal waterways.

The plaintiffs claimed to be the owners of the whole of the area known as Lot 171 situated at Kallang. This lot was granted to their first predecessor in title in 1858 and the whole lot must then have consisted of dry land. By gradual and imperceptible encroachment of the tidal water, the lot had been reduced to its present condition of river bed, foreshore and dry land — the dry land being less than a fourth of the total area. The plaintiffs bought over the lot in 1933 and when they went into occupation they found the defendants and 2 other Sawmills were using those parts of the lot which consisted of waterways for the purpose of conveying logs to their wharves and also those parts which were covered with water at high tide but left uncovered at low tide for the purpose of storing their logs.

The defendants claimed that they had become owners by prescription of those parts whereon they deposited their logs for storage by reason of adverse possession.